IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 14977 of 2006(G)

PETITIONERS:
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1. Y.P. BAIJU,
THODIYIL VEEDU, MUNDAKKAL MIDDLE, KOLLAM.

2. K. YESODA,
THODIYIL VEEDU, MUNDAKKAL MIDDLE, KOLLAM.

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT:

THE QUILON CO-OPERATIVE URBAN BANK LTD.,
REPRESENTED BY ITS GENERAL SECRETARY.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI. M.R. SABU
SMT. D.P. RENU
BY SR.GOVT.PLEADER SRI. P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.14977/2006 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AWARD IN ARC 420/2000 OF THE ARBITRATION COURT OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) KOLLAM DTD. 23/09/2002.**

EXT.P2: **COPY OF THE ORDER IN RP NO.29/2003 DTD. 30/03/2006.**

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): **COPY OF LOAN APPLICATION DTD. 14/11/98 BY PETITIONERS BEFORE THE BANK.**

EXT.R1(B): **COPY OF THE EQUITABLE MORTGAGE DEED DTD. 13/11/98 BY PETITIONERS TO BANK.**

EXT.R1(C): **COPY OF PROMISSORY NOTE EXECUTED BY PETITIONERS.**

EXT.R1(D)(i): **COPY OF NOTICE IN ARC NO.420/00 DTD. 4/05/2002 BY JOINT REGISTRAR OF CO-OP. SOCIETIES.**

EXT.R1(D)(ii): **COPY OF ACKNOWLEDGEMENT CARD RECEIVED FROM PETITIONERS.**

EXT.R1(E): **COPY OF ARGUMENT NOTE IN R.P.NO.29/2003 DTD.16/12/02 BY ON BEHALF OF THE RESPONDENT.**

/TRUE COPY/

Kss

K.PADMANABHAN NAIR, J.

W.P.(C)No.14977 OF 2006

Dated this the 9th day of February, 2007

J U D G M E N T

The defendants in A.R.C.420/2000 on the file of Joint Registrar (General) / Arbitrator of Co-operative Societies, Kollam are the writ petitioners. The respondent bank filed the petition before the Arbitrator claiming an amount of Rs.10,76,379/- from the defendants and their properties with interest @ 21%. An exparte award was passed on 23.9.2002. Challenging that award the petitioners filed R.P.No.29/2003 before the Co-operative Tribunal, Thiruvananthapuram. The Tribunal confirmed the award and dismissed the revision petition. Challenging those concurrent findings this writ petition is filed.

2. The petitioners have raised various contentions in the writ petition. For the disposal of the writ petition I am only considering one contention raised by the petitioners that they did not get an opportunity to contest the case before the Arbitrator on its merits. According to the petitioners, they have not received any notice of the arbitration proceedings from the Arbitrator. The plaint was filed on 6.12.2000. Notice was

ordered on 7.12.2000. Because of the postal strike there was delay in sending the notice. Notice was sent on 4.5.2002 by registered post with acknowledgment due. The acknowledgment card shows that the notices were served. The 2nd petitioner is Smt. K. Yesoda. It would appear that both the notices were received by the same person. According to the counsel for the bank it was the first petitioner who received both notices and he deliberately avoided the arbitration proceedings. Considering the fact that the award was passed on the date of appearance of the parties, I am of the view that it is only just and proper to give a reasonable opportunity to the petitioners to contest the matter on its merit, but that cannot be allowed as a matter of course. It can only be a conditional order. In case the petitioners deposit an amount of Rs. 5,00,000/- (Five lakhs only) within six weeks from today, the award passed by the Arbitrator as well as the order passed by the Co-operative Tribunal will stand set aside. In which case the Arbitrator / competent authority shall take back the plaint submitted by the first respondent Bank and dispose of the same afresh after giving a reasonable opportunity to the petitioners to contest the matter on merits.

3. In the result, the writ petition is disposed of in the

following manner:

The award passed by the Arbitrator in ARC 420/2000 and the order passed by the Co-operative Tribunal in R.P.No.29/2003 will stand set aside and the plaint in arbitration case will stand restored to file of Arbitrator/ competent authority on condition that the petitioners deposit an amount of Rs.5,00,000/-(five lakhs) within six weeks from today. In case the condition is complied with Arbitrator shall take back plaint in ARC 420/2000 to file and dispose of the same afresh in accordance with law after giving a reasonable opportunity to petitioners to contest the matter on merits. In case the arbitration case is restored to file the same shall be disposed of as expeditiously as possible, at any rate, within four months from the date of restoration. In case the condition is not complied with, the orders passed by the Arbitrator as well as the Co-operative Tribunal will stand confirmed and this writ petition will stand dismissed.

(K.PADMANABHAN NAIR, JUDGE)

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